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International Court of Justice

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COMM A
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Gallagher
27 July
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Affidavits

OFFICIAL TRANSCRIPT OF TESTIMONY FOR THE DEFENSE OF ORGANIZATIONS, TAKEN BEFORE A COMMISSION APPOINTED BY THE INTERNATIONAL MILITARY TRIBUNAL PURSUANT TO PARAGRAPH 4 OF THE ORDER OF THE TRIBUNAL DATED 13 March 1946.

SUBMISSION OF AFFIDAVITS BY THE DEFENSE PURSUANT TO THE ORDER OF THE TRIBUNAL DATED 5 July 1946.

27 July 1946.

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COMMISSIONER:

MR. GEORGE R TAYLOR.

THE GESTAPO

(The Commission convened at 1000 hours)

MR TAYLOR: The Commission will convene for the purpose of hearing affidavits on behalf of the Gestapo.

DR. MERKEL: Affidavit No. 45 by Karl Heinz Bendt, a SD Fuehrer. In the summary the affidavit is as follows: The average part of the Gestapo and the Kripo and various police and armed groups, composed as Einsatz action group in the East was about ten per cent. The action groups were not part of the Gestapo. The mass executions carried out by the Einsatz action group was not carried out. The reports of these occurrences only went to the Security Police, and SD personnel. The organization Gestapo did not issue any orders, or have any kind whatsoever of relationship to the mass executions. The atrocities with which the Gestapo is charged in document USR 55, are due to the action group D in action in Krassnodar. There was never any office of the Gestapo in Krassnodar.

MR TAYLOR: Are there any objections to the affidavit as submitted. Let the record show no objection to the affidavit submitted and the affidavit will be marked Gestapo No. 45.

COLONEL ORLOV: No objection.

DR. MERKEL: Affidavit No. 46 by Walter Huppenkothen, Government Director. The action groups were not part of any department of the RSHA.

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The tasks of the Einsatz of the action group coincided with those of the Gestapo only insofar as they were supposed to maintain peace, order and security inthe rear lines. If use was made of action groups to carry out executions, these tasks did not belong to those of the Gestapo.

COLONEL ORLOV: No objection.

MR TAYLOR: Let the affidavit submitted be marked Gestapo No. 46 for identification.

DR. MERKEL: The next affidavit submitted by Waldemar Schiemann, a Technical Inspector,which runs as follows: The deathwagons, that is, those wagons in which those inside of them were killed by gas streaming in did not belong to the equipment of a commander of the Security Police. When in the year of 1942 two such wagons were erroneously sent to the Einsatz Gruppe Minsk in Riga, these wagons were constantly watched by the drivers. The wagons could not be inspected by us, nor did the drivers tell us anything about their purposes. A little while later, however, we were told at the offices that one of the drivers had been condemned to death because while in an intoxicated condition he had spoken about the purposes of the wagons. A clarification concerning the purpose of these wagons was not given to the members of the offices, not even at this occasion.

MR TAYLOR: Have you anyobjection to the affidavit.

COLONEL ORLOV: None.

MR TAYLOR: Let the affidavit be marked Gestapo No. 47 for identification.

DR. MERKEL: The next is affidavit by Wilhelm Papst, which treats of the Gestapo and the concentration camps. Wilhelm Papst was an executive official. Summary of affidavit: Membership within the Gestapo was not

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voluntary. The officers were either commandeered or transferred to their offices. During the inspection of the concentration camp at Oranienburg in June 1940 by participants, or by students ofthe Policefuehrer school in Berlin. Theywere not given any information concerning the inhuman conditions and atrocities in the camp. The greater majority of the Gestapo members,too,did not have any knowledge of these occurrences. The Stapo-Stelle in Hannover had no occasion for the use of the socalled the Kugelerlass.

MR TAYLOR: Any objection to the affidavit submitted?

COLONEL ORLOV: No objection.

MR TAYLOR: The affidavit will be marked Gestapo 48 for identification.

DR. MERKEL: The next affidavit No. 49 is given by Anton Kaindl, camp commandant of Sachsenhausen. Summary: Inmates of the concentration camp were about fifty percent political inmates,and fifty per cent criminal preventive inmates. The approval for giving beatings of the inmates was not given to the commandant by the RSHA,but by the Economic and Administrative Main Office.

MR TAYLOR: Are there any objections to the affidavit submitted?

COLONEL ORLOV: No objection.

MR TAYLOR: Let the affidavit be marked as Gestapo No. 49 for identification.

DR. MERKEL: Affidavit No. 50, by Edward Richrath, criminal counsellor. This affidavit treats the preventive custody of criminal delinquents. The number of inmates who had been interned for preventive reasons amounted to about seven to eight thousand in the entire number of professional and

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habitual criminals interned in the concentration camp.

COLONEL ORLOV: No objection.

MR TAYLOR: Let the affidavit be marked Gestapo No. 50 for identification.

DR. MERKEL: The next affidavit No. 51 by Drich Mamsch, criminal officer. Summary: The Gestapo office in Kassel was not given any authorization to have interrogations of concentration camp inmates carried out by a Gestapo officer.

MR TAYLOR: Any objection to that affidavit?

COLONEL ORLOV: No objection.

MR TAYLOR: Let the affidavit be marked Gestapo No. 51 for identification.

DR. MERKEL: Gestapo No. 52 is an affidavit by criminal secretary Erich Thun. Summary: The Gestapo office of Danzig was not authorized to enter concentration camp Stutthof whenever any people were sent to it. The concentration camps were not under the jurisdiction of the Gestapo. The Gestapo had no influence whatsover upon food, treatment, and medical treatment of the prisoners. When a person was handed over to the concentration camp, the protective custody was entered for the Gestapo. The political department of the concentration camp was under the jurisdiction of the camp commandant.

MR TAYLOR: Any objection to the affidavit?

COLONEL ORLOV: No objection.

MR TAYLOR: Let the affidavit be marked Gestapo No. 52 for identification.

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DR MERKEL: The next affidavit No. 53 was given by Marianne Walgast, a woman and a studen of law. The people working in the I.G. Farben-installation near Auschwitz,and the population of Auschwitz did not know anything concerning the true character of the concentration camp at Auschwitz.

MR TAYLOR: This is an affidavit for the purposes of showing this one person did not know anything about it,but where did she get her information?

DR. MERKEL: This Marianne Wolgast was emplloyed by the I.G. Farben works as a student. Her testimony does not only refer to herself, but also to the people working with her. She says in her testimony that during the entire time she was in Auschwitz she had not heard from any one anything to the effect that the concentration camp at Auschwitz was a extermination Jewish ~~concentration~~ camp, and ends by saying that she did not believe that the population of Auschwitz had ahy knowledge whatsoever of these incidents.

MR TAYLOR: It appears more or less as a personal opinion. It will be received and marked Gestapo No. 53 for identification, although I am a little doubtful that the affidavit is a defense.

DR. MERKEL: May I add one sentence?

MR. TAYLOR: Yes.

DR. MERKEL: It is true that this witness put down her personal impression,but these personal impressions are based on a number of conversations she had with a number of the people whom she met there.

MR. TAYLOR: Do you have any comment to make Colonel Orlov on the affidavit?

COLONEL ORLOV: After the testimony given by Hoess, we know of

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the conditions as they really existed in Auschwitz. I have no objections towards this document . This woman merely says that she lived in Auschwitz near the concentration camp, and talked to a number of people. I doubt there is any probative value to the affidavit,but have no objection against it.

MR TAYLOR: Very well. The next affidavit.

DR.MERKEL: The next affidavit No. 54 by Fritz Liphardt, Oberregierungsrat, senior counsellor. Summary: The administration charged the guarding and inspection of the concentration camp did not belong to the jurisdiction of the Gestapo; that the members of the Gestapo did not have any possibility of getting to or insight into the inner conditions of the concentration camp; not even of those in it which the Gestapo has not itself protective custody of arrested persons. During the inspections of concentration camps Sachsenhausen,Dachau and Auschwitz in 1937, 1938,and at 1941 and 1942, by a total of 280 leading Gestapo officials, no irregularities of any kind whatsoever could be discovered. If the leading officials of the Gestapo did not know anything of the conditions in the camps, how much less could the great mass of Gestapo members who had never even seen a concentration camp know of them.

MR TAYLOR: Any objection to the affidavit?

COLONEL ORLOV: I don't quite understand on what the testimony of Fritz Liphardt is based. Either he himself heard something, or he bases his testimony on reports, affidavits, or documents that he has read.

DR. MERKEL: The affidavit shows that Fritz Liphardt himself took part in the inspections of three concentration camps mentioned, that is, Sachsenhausen,Dachau and Auschwitz. During these inspections he saw nothing of any irregularities or mistreatments,or bad living conditions. He says

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in Auschwitz we were pointed out the crematorium that was there in order to cremate inmates who had died in Auschwitz,but the crematorium was not shown to us. As there were about twenty to thirty thousand inmates in Auschwitz,and the execution sentences of protective custody inmates carried out in Auschwitz , this was not very unusual.

COLONEL ORLOV: Under these circumstances I have no objection.

MR TAYLOR: Let the affidavit be marked Gestapo No. 54 for identification.

DR. MERKEL: The next affidavit No. 55 by Paul Willkomm, criminal officer. The resettlement of Jews from Polen lay in the hands of higher SS and Policefuehrer of concentration camps Maidanek,was not under the jurisdiction of the Gestapo.

MR TAYLOR: Are there any objections tothe affidavit?

COLONEL ORLOV: No objection.

MR TAYLOR: Let the affidavit be marked Gestapo No. 55 for identification.

DR. MERKEL: The next affidavit No. 56 by Reinheld Aust, criminal Kommissar. Summary: The tasks of intelligence belonged to the tasks of the Gestapo in 1934; all officials who had up to now been employed by the police intelligence were taken over by the Gestapo. The sphere of work of the police intelligence remained the same as before, also after had been taken over by the Gestapo. This division had nothing to do with the handling of political offenses.

MR TAYLOR: Any objection tothe affidavit?

COLONEL ORLOV: No objection.

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MR TAYLOR: Well, let the affidavit be marked Gestapo No. 56 for identification.

DR. MERKEL: The next affidavit by Erich Hahnenbruch. Reg. Rat. Summary: There was no battle of the Gestapo against the charges as such, but only a defense of political attacks that was carried on on the part of the dominations against the Party. There was no connection between the division called the political church and the Jewry. At the end of 1944 about nineteen Protestants and 251 Catholic clergymen were in protective custody. At the beginning of 1945 a large number of them were dismissed. A series of Jehovah witnesses should have been condemned to death by the military courts as refusing to do military service, but by reason of an agreement between Himmler and the Ministry of Justice, they were entered into concentration camps. The document R15 was not supposed to prohibit dominations but political activity of the confessional youth association. The same is shown by document 1521-PS.

MR TAYLOR: Are there any objections to the affidavit?

COLONEL ORLOV: No objection.

MR TAYLOR: The affidavit may be marked Gestapo No. 57 for identification.

DR. MERKEL: The affidavit No. 58 is an affidavit by Felix Ruehl, Reg. Ass. The prosecution of churches as such was not intended by the Gestapo, but only the persecution of individual political clergymen. The Gestapo of Augsburg that had a total number of personnel of 150 officials and employees had only one official to work on church matters. From the first of September 1944 to March 1945 no clergyman was arrested by the Augsburg Gestapo.

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MR TAYLOR: Any objection tothe affidavit.

COLONEL ORLOV: In my opinion the document is accummulative to No. 57.

MR TAYLOR: Let the record show the objection of counsel for the prosecution to the affidavit.

DR MERKEL: My sole reason for wishing to submit this affidavit is that it shows that of an entire number of 150 officials and employes of the Gestapo personnel, only one of them was there to work on church questions.

MR TAYLOR: The affidavit will be marked as Gestapo No. 58 for identification.

DR. MERKEL: The next affidavit is No. 59 by Hans-Helmut Wolff, Oberregierungsrat. Summary: From March 1938 until January 1940 no clergyman was entered into a concentration camp by the Gestapo office Halle and Frankfurt. The Gestapo did not carry on a regular church information service and supervision of sermons only took place at a rally.

MR TAYLOR: Any objection.

COLONEL ORLOV: No objection.

MR TAYLOR: The affidavit will be marked as Gestapo No. 59 for identification.

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DR. MERKLE: The next affidavit is No. 60 by ~~XXXXXX~~ Josef Strohmeier, and states:

The inmates of female/labor ~~training~~ ~~xxxxxxxxxxxxxxxx~~ ~~xxxx~~ training camps near Munich were not mistreated by guards. The inmates were adequately dressed and ~~xxxx~~ fed and were also under medical care.

MR. TAYLOR: Is there any objection to the affidavit? If not, the affidavit will be marked Gestapo No. 60 for identification.

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DR. MERKLE: Affidavit No. 61 by Alfred Wolterstorf, in which he states:

From 1920 until 1945 witness never mistreated any prisoner nor suffered any mistreatment. Physicial injuries or infliction of physical injuries during duty were seriously punished.

MR. TAYLOR: Are there any objections to this affidavit? If not, let the affidavit be marked No. 61 for identification.

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DR. MERKLE: Affidavit No. 62 is an affidavit by Ernst Fuche:

Summary: After the entry of the Allied Troops it was alleged by the Frankfurt Press that a torture chamber of the Gestapo had been on the premises on Linden Strasse,

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No. 27, in Frankfurt. The witness conducted an American Commission there and confirmed at the premises that no such torture chamber had ever been there.

MR. TAYLOR: Is there any objection to the affidavit?

COLONEL ORLOV: I don't understand this affidavit. What value is this affidavit.

DR. MERKLE: This affidavit is supposed to show that first, as in the case mentioned here, the existence of Gestapo torture chambers is spoken of and the existence of other torture chambers was alleged also but in reality did not exist. The French Prosecution for example have submitted documents with the intent to prove that such torture chambers existed with security police officers in France, and just as the Prosecution has tried by submitting certain documents to show that torture chambers existed, I should like to show by submitting this affidavit that torture chambers, at least as applied to Frankfurt did not exist.

COLONEL ORLOV: Counsel does not convince the Prosecution. The witness was a radio employee and had nothing to do with the Gestapo. What is the meaning of the affidavit and what does it prove - that Fuche proved that a report concerning the existence of torture chambers chambers was unfounded?

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DR. MERKLE: I would like to be allowed to reply in a few words. This Mr. Fuche was drafted into the Gestapo under the emergency service regulations from the lst of October, 1943, until March 19th, 1945, and he further testified to the fact, namely, that a torture chamber which was supposed to have been on the premises of Linden Strasse, No. 27, in Frankfupr t, in reality did not exist there.

COLONEL ORLOV: Fuche himself doesn't say this. He just said that an interpreter by the name of Budeschek, who was a former member of the Gestapo was employed by the American/Military Government to donduct a commission down there and that the Commissiondid not find anything on these premises. I might agree with the Prosecutor but at any rate Fuche tells us that this ~~xxx~~ interpreter conducted the Commission there but that nothing was found there, as the torture chamber actually did not exist. In my opinion no objection can be made to a witness testifying to what a third person has told him. Similar documents are also being used by the Prosecution.

MR. TAYLOR: Was affiant a member of the Commission or a party to the inspection?

DR. MERKLE: No, evidently not. He just heard this from Budeschek.

MR. TAYLOR: The affidavit appears to be more or less hearsay, but for the value it may have for the defense it will be received and marked Gestapo No. 62

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for identification, and the objection of the Prosecution will be noted in the record.

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DR. MERKLE: The next affidavit No. 63 was made by Adolf Jawinsky in 1943.

Summary: No prisoners in the police prison at Shceveningen and Groningen were maltreated. Severe punishments were threatened for that treatment. During the retreat of German troops prisoners at Scheveningen and Groningen were not killed but either dismissed or removed.

MR. TAYLOR: Are there any objections to the affidavit?

COLONEL ORLOV: No objections.

MR. TAYLOR: Let the affidavit be marked No. 63 for identification.

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DR. MERKLE: The next affidavit, No. 64, by Jakob Kramer, states:

At the end of March, 1945, fifteen members of the resistance movement were arrested in Innsbruck. In spite of the fact their offenses had been proved, the fifteen persons were not killed at the approach of Allied Troops but set at liberty.

MR. TAYLOR: Is there any objection to the affidavit? If not, the affidavit will be marked No. 64 for identification.

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DR. MERKLE: The next affidavit is an affidavit by Albert Kaden, No. 65:

Summary: Re-examination by the Gestapo liaison officers in Salzgitter in the year 1943 at camp No. 49 for foreign laborers (Reichswork Salsgitter) showed that several fuehrers of the camp had confiscated certain food meant for the workers and used it for themselves. As the laborers from the East were not allowed to appear as witnesses before an ordinary court, the incident was reported to the RSHA. The guards concerned were entered into a concentration camp, though one of them was a political leader of the NSDAP.

COLONEL ORLOV: I don't quite understand this affidavit. In the previous avvidavits that have been submitted they have read and it was maintained that the Gestapo had nothing to do with concentration camps, and in this affidavit mention is made of the fact that several camp fuehrers had committed an offense and were arrested.

DR. MERKLE: May I say the following in a few words concerning what the Gestapo had to do with concentration camps? I have maintained and tried to prove that the Gestapo had nothing to do with the treatment of the inmates and inner administration and conditions as they existed within the concentration camps, but that these concentration camps were under the jurisdiction of the SS economic administration main office, but I have never

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tried to deny nor have I denied that the entering of protective custody prisoners into concentration camps was made by Gestapo offices, as well as other offices. In this affidavit we only treat of the fact that certain guards who had committed offenses towards certain inmates were in their turn entered into concentration camps by the RSHA. That was, of course, one of the duties of the Gestapo.

MR. TAYLOR: Are there any further objections?

COLONEL ORLOV: In Affidavit No. 54 it says for example that the regiments, administration, inspection and guarding of concentration camps did not belong to the jurisdiction of the Gestapo. Members of the Gestapo had no possibility of getting any insight into the inner relations of the concentration camps, or even into those in which they entered their protective custody prisoners. With the transfer into the concentration camp the protective custody case was finished by the Gestapo.

DR. MERKLE: It is perfectly clear and I completely agree with Colonel Orlov, but that exactly is where the difference comes in, the transfer into the concentration camp was a case for the Gestapo. However, as soon as the prisoner was within the concentration camp he came exclusively under the administration of the concentration camp, and the administration of these concentration camps was exclusively an affair of the SS economic and administration

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central office. It was not an affair of the Gestapo and if affidavit No. 65 talks about the prisoners being transferred into the concentration camps that xx of course was an affair for the Gestapo, I mean the transfer into the concentration camps, and that is all this affidavit No. 65 is talking about, because it says that the guards were sent to a concentration camp though one of them was a political leader in the NSDAP. I don't see any contradiction to the previously submitted affidavits. I again want to outline that we must differentiate between the transfer into a concentration camp, the protective custody procedure and the execution of protective custody in the concentration camp.

MR. TAYLOR: Any further objections?

COLONEL ORLOV: No.

MR. TAYLOR: The objection of the Prosecution and the reply of the defense will be noted in the record. For the purpose of identification the affidavit will be marked Gestapo No. 65.

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DR. MERKLE: The next is affidavit No. 66, an affirmation /xxxxxxxxxx under oath by Hermann Wellmann.

Summary: A hospital was erected in Braunschweig for Russian and Polish workers in the year 1942. With the exception of the chief the entire personnel was composed of Russian laborers. The NSDAP became aware in 1944 that

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that former Secretary Peters, who was chief of the hospital administration had taken food, alcohol and other things for a long period of time, and in answer to statements of the Russian Prosecution witnesses and so on a penal investigation was started and Peters was sentenced to three years in jail. The NSDAP In Braunschweig on the basis of this very mild sentence considered whether it might not be advisable to put protective custody on Peters after he had served his sentence. In cases in which a department chief had committed immoral crimes against Russian or Polish ~~females~~ females very strict measures were taken.

MR. TAYLOR: Is there any objection to the affidavit?

COLONEL ORLOV: No objection.

MR. TAYLOR: The affidavit will be ~~marked~~ marked Gestapo No. 66 for identification.

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DR. MERKLE: Gestapo Affidavit No. 67 is an affirmation under oath by Walter of Walter Hildebrand.

Summary: The Gestapo had nothing to do with the deportation of foreign workers into the Reich territory and the labor offices and their employment staffs in the occupied territories were competent parties. Those details which regarded the care, shelter and food supplies of these workers had become derelict and were

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treated very seferely by the state police.

MR. TAYLOR: Are there any objections to the affidavit? if Not, the affidavit will be marked No. 67 for identification.

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DR. MERKLE: Affidavit No. 68 is an affirmation under oath by Willy Klueting.

Summary; In Holland steps were taken against crimes against property by organized gangs which maintained they were Sipo officials and that they were entitled to confiscate property. Three of such gangs of twelve and sixteen men each were found in Amsterdam.

COLONEL ORLOV: No objection.

MR. TAYLOR: Let the affidavit be marked No. 68 for identification.

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DR. MERKLE: Affidavit No. 69 is an affidavit by Kurt Wenzel, and concerns the appropriation of strange capital by Gestapo officials and states it was strictly penalized by a procedure against the Secretary of the Criminal police attached to the Gestapo office in Holland who had enriched himself with Jewish property and another procedure against concentration camp commanders who had enriched themselves on property belonging to prisoners.

MR. TAYLOR: Are there any objections to the affidavit?

COLONEL ORLOV: No.

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MR. TAYLOR: Let the affidavit be marked Gestapo No. 69 for identification.

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MR. MERKLE: The next one is affidavit No. 70 by Rudolf Seidel.

MR. TAYLOR: Do you have the original affidavit, Dr. Merkle?

DR. MERKLE: This is a carbon copy. I only have this copy, which, however, was signed by himself and certified. Unfortunately, I haven't the original.

MR. TAYLOR: It is submitted as the original though?

DR. MERKLE: If you will please consider it as such.

Summary: Officials of the Gestapo who became members of the SS on the basis of a corresponding ranking coordination in the SS did not become members of the General SS. Still less were the so-called uniform wearers of the Sipo and SD members of the SS.

MR. TAYLOR: Are there any objections to the affidavit? If not, let the affidavit be marked Gestapo No. 70 for identification.

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DR. MERKLE: The next affidavit No. 71 is an affirmation under oath by Dr. Horst Laube.

Summary: Keitel's statement that with the employment of the higher SS police leaders in France, the persecution of Jews and and arbitrary application of

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the nicht tag edict, that his statement is incorrect. Matters against the Jews had been executed by the French government in agreement with the military commanders and with the German Embassy since 1940, even before the employment of the higher SS and police leaders, the nicht tag decree had been applied by the commando staffs of the military commanders.

Furthermore, it is not correct that there had been an independent political executive even before 1942. Rather the political executive up until April, 1942, came under the supervision of the military commander of Paris and was in the hands of the French police of the GSP and the field gendarmie. Police in the German armed forces did not work against each other but the cooperated. The German police also did not work in an arbitrary manner, particularly as far as hostages were concerned. The three shooting of hostages from May 1942 until February 1944 were based on the directives issued to the military commanders and to the higher SS and police leaders.

MR. TAYLOR: Is there any objection to the affidavit?

COLONEL ORLOV: No.

MR. TAYLOR: Let the affidavit be marked Gestapo No. 71 for identification.

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DR. MERKLE: No. 72 is an affidavit from Heinrich Truckenbrodt.

Summary: The composition of the personnel of the

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Gestapo in Hannover from 1937 until 1944: Twenty per-cent detectives who were taken on before 1933 by the political police; seventy per-cent were schutzpolisei officials who partly for the duration of the war had been attached to the Gestapo, and ten per-cent came from the free professions, including those whowere drafted on the basis of the emergency decrees. The Stapostelle in Hannover took steps against excesses against the Jews on the 9th and 10th of November,1938. SS and SA men who had enriched themselves were punished.

MR. TAYLOR: Is there any objection to the affidavit?

COLONEL ORLOV: No.

MR. TAYLOR: Let the affidavit be marked Gestapo No. 72 for identification.

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DR. MERKLE: The next affidavit is from Kurt Joergens and is No. 73:

Summary: The technical officials of the Gestapo had nothing to do with either the active execution of any executed tasks, much less had they become aware of them in any way.

MR. TAYLOR: Are there any objections to the affidavit?

COLONEL ORLOV: No objections, thank you.

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MR. TAYLOR: Let the affidavit be marked Gestapo No. 72 for identification.

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DR. MERKLE: The next one, No. 74, is a statistical summary of 530 members of the Gestapo in the camp Darmstadt. It has beensworn to by Reinhard Wollf. Only 60.5 per-cent were volunteers, four of the 530 men had been previously sentenced before 1933; 21 individuals were members of the SS and 87 were members of the party. 31 members were members of the/~~XXX~~ NSDAP of Germany and 3 were members of the communist party of Germany; 170 of them were protestants, 52 were catholic and 257 of them were professional policemen.

MR. TAYLOR: If there are no objections the affidavit will be marked Gestapo No. 74 for identification.

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DR. MERKLE: The next affidavit is No. 75 and it comes from KARL FOERSTER.

SUMMARY: Only the RSHA could pronounce protective custody. The competent office was occupied only by administrative officials. Decrees and regulations had been issued pertaining to protective custody proceedings. In many cases only a warning or bell was given instead of a protective custody asked for by the Gestapo. Each order for protective custody was constantly re-checked. Either dismissal or eased employment was ordered in good conduct cases. The

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office handling protective custody did not issue the orders pertaining to the mass arrest of Jews.

The concentration camps were not subordinate to the Gestapo but to the inspector of the concentration camps or the SS economic or administrative central office. The political departments of the concentration camps also did not come under the Amt IV but under the camp commanders.

He knew of the "bullet" decree, but at an official conference with the Chief of Amt IV the word "bullet" was interpreted in the talks that it was not to mean "shooting" by any chance but merely referred to the fact arrestees were to be kept from escaping by an iron ball to be attached to their foot. Neither the office of protective custody nor the mass employees of Amt IV or of RSHA were acquainted with the extermination of Jews or other crimes.

MR. TAYLOR: If there is no objection let the affidavit be marked Gestapo No. 75 for identification.

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DR. MERKLE: No. 76 is an affidavit by Guenter Fentz.

Summary: Basically membership in the Gestapo was not voluntary. Basically, resignation was not possible. The Gestapo office in Darmstadt in 1940 to 1942 was composed of approximately fifty-seven per-cent officials, and forty-three per-cent employees. Of the latter figure eighty-four

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per-cent were not employed in state police tasks. The office of the SIPO and of the SD in occupied territories also were not composed of voluntary members. While the witness was active in Darmstadt from 1940 until 1942 and in the RSHA from 1942 to the end, he had not become aware of any third degree interrogation cases. Severe punishment was meted out in case of mal-treatment of prisoners. Thus, a warden in a jail was punished with a rather long prison sentence for a mistreatment of a Jewish prisoner in the year 1940, and he was put out of his office. The Gestapo officials were not outside of the law and justice. The members of the Gestapo by the creation of the SS and police judiciary were submitted to more severe principles of law than other felons. Thus, fifty Gestapo members had committed crimes during the evacuation of Jews in the year 1942. Partly they were sentenced to death or to lohg prison sentences. The crimes with which the Gestapo is charged today were not know.

MR. TAYLOR: If there is no objection the affidavit will be marked No. 76 for identification.

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DR. MERKLE: Affidavit No. 77 is by Felix Ruehl.

Summary: It was generally known that the purpose of the deportation of the Jews was their employment and not by any means their biological extermination. Visits in these concentration camps did not show any irregularity. Despite several visits in prisoner of war camps nothing

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had become known of the fact that Jews had been there or were to be executed.

As far as parachute troops were concerned, the only thing that was known was that they were to be picked up and immediately to be transferred to the custody of the armed forces, but not that they were to be shot, and also the fact that no one knew anything about the activities of any other internment office was to be found in the strict secrecy of all agents within the Gestapo.

MR. TAYLOR: If there is no objection, the affidavit will be marked No. 77 for identification.

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DR. MERKLE: No. 78 is an affidavit from Anton Weiss.

Summary: Nothing was known about the extermination of Jews but the special action group of Gestapo officials did not have any chance to see what was going on in the concentration camps and particularly they could not know anything about the maltreatment and killing there.

MR. TAYLOR: If there is no objection, let the affidavit be marked No. 78 for identification,

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DR. MERKLE: Affidavit No. 79 is by Hans Tesmer.

Summary: Niether the witness nor other members of his office knew anything about extermination of Jews, mistreatments and killings in the concentration camps and

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such like.

MR. TAYLOR: Are there any objections to the affidavit?

COLONEL ORLOV: No.

MR. TAYLOR: Let the affidavit be marked Gestapo No. 79 for identification.

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DR. MERKLE: Next is Affidavit No. 80 by Erich Hahnenbruch. The great mass did not know anything about the crimes with which the Prosecution has charged the ~~XXXXX~~ Gestapo, particularly because of the secrecy regulations. Depsite visits to Sachsenhausen and Dachau, the office for dealing with matters pertaining to the Church in the RSHA had not become aware of the mistreatments in the concentration camps. Any misdemeanors of any sort were to be particularly penalized if they were committed by members of the Gestapo bythe SS and police corps.

Thus, I heard that a commandant of a concentration camp was hanged by order of Himmler in the presence of all other concentration camp commanders because he permitted mistreatment and because he had stolen property belonging to the inmates.

MR. TAYLOR: Is there any objection?

COLONEL ORLOV: One moment, sir, the affidavit of Hans Tesmer?? reads as follows:

"A refferent told me that a commandant of a

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concentration camp by order of Himmler had been hanged in the presence of other concentration camp commandants because he had permitted maltreatment and because he had stolen property of inmates." That is so intolerable I doubt if this affidavit has any significance whatsoever. Perhaps the rest of it is based on such tales.

DR. MERKLE: It is perfectly correct as Colonel Orlov has stated that this is not a description based on his own experience but merely the re-telling of a story told by a third person. Of course, it is up to the Tribunal to evaluate the correctness of such as to whether it is true or not. In my opinion, the witness has re-told correctly the story told to him. Of course, I cannot examine the witness as to whether it is true or not, but on the other hand I do not believe that a referremt tells such a story unlessit is true.

MR. TAYLOR: Colonel Orlov, have you any further objection?

COLONEL ORLOV: Yes, I have another objection. It is my opinion that the whole affidavit is based really on assumption and hearsay.

DR. MERKLE: Even if this one point should be not objectively true, I beg that this affidavit be accepted pertaining to other matters contained therein, such as the knowledge of the office dealing with matters pertaining to churches and regarding the situation in concentration camps.

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MR. TAYLOR: The objection of the Prosecution and the reply of the defense counsel will be noted in the record and the affidavit will be marked Gestapo No. 80 for identification.

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DR MERKEL: The next one is 81, an affidavit by ANTON KRAMER. The crew of an emergency landed English bomber in North Germany was protected against the threats of the population by the witness in his capacity as an official of the STAPO toward the end of 1944.

COMMISSIONER: Any objections? Then let the affidavit be marked GESTAPO NO. 81 for identification.

* * * * *

DR. MERKEL: No. 82, by HANS TESMER. The shooting of the 12,000 Polish officers in Katyn was not executed by Einsatzkommando of the SIPO and of the SD, because - according to the expert opinion of the Commission, these executions took place in the beginning of 1940. That is to say, at a time when there were neither German troops nor German police in the country.

COMMISSIONER: Any objections to the affidavit?

COL ORLOV: I have an objection to this affidavit. The case of Katyn was examined by the International Military Tribunal very thoroughly in a special session. Very many witnesses were heard before the Tribunal itself. The witness Tesmer has written as follows:

Discussions with members of the army group, among others with the then chief administrative officer Col. I. G. von Unold, as well as with the chief

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of the propaganda echelon, I became convinced that these Polish officers were shot during the period from January to October 1940.

The military had submitted to it, special documents and writings which stated when these killings had taken place. That is why I believe this affidavit does not prove anything in the face of stories told to the witness, because these statements were made by those who themselves were interested in it; consequently, it might be self-serving evidence. This objection, as far as I am concerned, is of very great importance, and I suggest rejection of this affidavit absolutely.

DR. MERKEL: As to the first objection of the prosecutor: The attorneys for the defense did not have an opportunity to hear the witnesses which have appeared before the Tribunal because a ruling of the Tribunal prohibited it expressly. I only submit this affidavit because within the evidence submitted by the Russian prosecution it was charged that these 12,000 Polish officers were executed by an Einsatzkommando of the SIPO or the SD. I do not find, either, that this affidavit brings anything new as such; as far as I know, all this affidavit does is repeat the point of view of the German defense. I submit this affidavit only in an attempt to prove that members of the SIPO

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could not have taken part in this execution in Smolensk because neither German troops nor German police were present in Smolensk during that period.

COL ORLOV: Furthermore, I don't know what the connection is between the Gestapo and this case. I myself do not know all the documents pertaining to this case; all I know is that everything has been examined thoroughly by the Tribunal. That is why, in my opinion, this document has no relevancy at all to the Gestapo. First, one must be acquainted with all those documents which I have just mentioned. Only then could we know whether this affidavit has any relevancy to the case of the Gestapo.

DR. MERKEL: It was the Russian prosecutor who brought about the connection with the Gestapo during the proceedings by submitting a document to a witness and asking him whether at that period Einsatzgruppe of the SIPO or the SD had been active in Smolensk. That is the only connection between the SIPO and the case of Katyn.

COL ORLOV: If the Commission has not become convinced that this affidavit should be rejected I beg the Commission to grant me time to have the entire document translated, and read all the affidavits pertaining to the case of Katyn.

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COMMISSIONER: The objections to Affidavit No. 82 by the prosecution, and comment thereon by defense counsel, is noted in the record. The request of the prosecution that the affidavit be translated is accepted and the affidavit will be translated. The same will be marked GESTAPO NO. 82 for identification.

* * * * *

DR. MERKEL: No. 83 - an affidavit by HELMUT FROMM. Organization of the office of the commander of the security police and of the security service in the general government. The members of this office did not come because of voluntary applications, but almost exclusively on the basis of being detached to it. The question of the Poles in the district of Lublin as mentioned in Document No. L-61 was executed on the basis of a directive of the higher SS and police leader. SIPO and SSD did not participate in this measure.

COL ORLOV: No objections.

COMMISSIONER: Let the affidavit be marked GESTAPO NO. 83 for identification.

* * * * *

DR MERKEL: Affidavit No. 84 - is another affidavit by HANS TESMER. The resignation of the witness from the Gestapo was an exceptional case. The

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witness was reproached by Heydrich because of his being drafted to the Armed forces; and only as an exceptional case he did not take the most severe measures against it.

COMMISSIONER: Any objections?

COL ORLOV: No objections.

COMMISSIONER: Let the affidavit be marked GESTAPO No. 84 for identification.

* * * * *

DR. MERKEL: The last affidavit, No. 85, by RUDOLF DIELS. The lower and medium high administrative officials did not come to the Gestapo voluntarily, but they could not resign from the Gestapo either. They did not have any knowledge of executive work. They are to be judged like normal civil servants during that period. The lower and medium high executive civil servants also could not always recognize excesses against the law because they could not recognize the case in its entirety. If one assumes the organization to have been of criminal character, administrative and executive officials could have had any knowledge of it.... The group of technical civil servants, employees and those employed on the basisof emergency decrees cannot be regarded either as accomplices nor as having known of the "criminal character" of the organization. The affidavit dated 31 October 1945

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can remain as such only within these limitations.

COMMISSIONER: Are there any objections to this affidavit?

COL ORLOV: None.

COMMISSIONER: Let the affidavit be marked GESTAPO NO. 85 for identification.

* * * *

DR MERKEL: That is all.

COMMISSIONER: Dr. Merkel, outside of No. 82, do you have any request for any of these affidavits to be translated?

DR. MERKEL: Yes, I should like to request that the following numbered documents, or affidavits, be translated:

Nos. 46, 54, 74 and 76.

How many can we translate?

COMMISSIONER: We will try to submit the ones you want translated. If we can get them translated we want to do it. We will try to translate the important and material ones that you submit.

DR. MERKEL: That is all, sir.

COMMISSIONER: Very well, the Commission will adjourn until 10 o'clock Monday morning.

* * * * *

The foregoing is atrue and correct transcript of Affidavits submitted by DR. MERKEL, taken on 27 July 1946.

Charles Gallagher
Reporter (pp 1 - 9

Ray W. Cook
Reporter (pp 10 - 28

Genevieve Boylan
Reporter (pp 29 - 34

CERTIFIED TO :

Geo. T. Taylor
Commissioner

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OFFICIAL TRANSCRIPT OF TESTIMONY FOR THE DEFENSE OF ORGANIZATIONS, TAKEN BEFORE A COMMISSION APPOINTED BY THE INTERNATIONAL TRIBUNAL PURSUANT TO PARAGRAPH 4 OF THE ORDER OF THE TRIBUNAL DATED 13 MARCH 1946.

SUBMISSION OF AFFIDAVITS BY THE DEFENSE PURSUANT TO THE ORDER OF THE TRIBUNAL DATED 5 JULY 1946.

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27 July 1946.

COMMISSIONER :

MR. GEORGE R. TAYLOR.

THE GESTAPO

(The Commission convened at 1000 hours)

MR. TAYLOR : The Commission will convene for the purpose of hearing affidavits on behalf of the Gestapo.

DR. MERKEL : Affidavit No. 45 by Karl Heinz Bendt, a SD Fuehrer. In the summary the affidavit is as follows : The average part of the Gestapo and the Kripo and various police and armed groups, composed as Einsatz action groups in the East was about ten per cent. The action groups were no part of the Gestapo. The mass executions carried out by the Einsatz action group was not carried out. The report of these occurences only went to the Security Police, and Sd personnel. The organization Gestapo did not issue ahy orders, or have any kind whatsoever of relationship to the mass executions. The atrocities with which the Gestapo is charged in document USR 55, are due to the action group D in action in Krassnodar. There was never any office of the Gestapo in Krassnodar.

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MR. TAYLOR : Are there any objections to the affidavit as submitted.

COLONEL ORLOV : No objections.

MR TAYLOR : Let the record show no objection to the affidavit submitted and the affidavit will be marked Gestapo No. 45.

DR. MERKEL : Affidavit No. 46 by Walter Huppenkothen, Government Director. The action groups were not part of any department of the RSHA. The tasks of the Einsatz of the action group coincided with those of the Gestapo only insofar as they were supposed to maintain peace, order and security in the rear lines. If use was made of action groups to carry out executions, these tasks did not belong to those of the Gestapo.

COLONEL ORLOV : No objection.

MR. TAYLOR : Let the affidavit submitted be marked Gestapo No. 46 for identification.

DR. MERKEL : The next affidavit submitted by Waldemar Schiemann, a Technical Inspector, which runs as follows : The deathwagons, that is, those wagons in which those inside of them were killed by gas streaming in did not belong to the equipment of a commander of the Security Police. When in the year of 1942 two such wagons were erroneously sent to the Einsatz Gruppe Minsk in Riga, these wagons were constantly watched by the drivers. The wagons could,not be inspected by us, nor did the drivers tell us anything about their purposes. A little while later, however, we were told at the office that one of the drivers had been condemned to death because while in an intoxicated condition he had spoken about the purposes of the wagons. A declarification concerning the purpose of these wagons was not given to the members of the offices, not even at this occasion.

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MR TAYLOR : Have you any objection to the affidavit.

COLONEL ORLOV : None.

MR. TAYLOR : Let the affidavit be marked Gestapo No.47 for identification.

DR. MERKEL : The next is affidavit by Wilhelm Papst, which treats of the Gestapo and the concentration camps. Wilhelm Papst was an executive official. Summary of affidavit : Membership within the Gestapo was not voluntary. The officers were either commandeered or transferred to their offices. During the inspection of the concentration camp at Oranienburg in June 1940 by participants, or by students of the Policefuehrer School in Berlin, They were not given any information concerning the inhuman conditions and atrocities in the camp. The greater majority of the Gestapo members, too, did nothave any knowledge of these occurances. The Stapo-Stelle in Hanover had no occasion for the use of the so called Nuglerlass.

MR TAYLOR : Any objection to the affidavit submitted?

COLONEL ORLOV : No objection.

MR TAYLOR : The affidavit will be marked Gestapo 48 for identification.

DR. MERKEL : The next affidavit No. 49 is given by Anton Maindl, camp commandant of Sachsenhausen. Summary : Inmates of the concentration camp were about fifty persent political inmates, and fifty per cent criminal preventive inmates. The approval for giving beatings of the inmates was not given to the commandant by the RSHA, but by the Economic and Administrative Main Office.

MR TAYLOR : Are there any objections to the affidavit submitted?

COLONEL ORLOV : No objections.

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MR. TAYLOR : Let the affidavit be marked as Gestapo No. 49 for identification.

DR. MERKEL : Affidavit No. 50, by Edward Richrath, criminal counsellor. This affidavit treats the preventive custody of criminal delinquents. The number of inmates who had been interned for preventive reasons amounted to about seven to eight thousand in the entire number of professional and habitual criminals interned in the concentrati n camp.

COLONEL ORLOV : No objection.

MR TAYLOR : Let the affidavit be marked Gestapo No. 50 for identification.

DR. MERKEL : The next affidavit No. 51 by Erich Hansch, criminal officer. Summary : The Gestapo office in Kassel was not given any authorization to have interrogations of concentration camp inmates carries out by a Gestapo officer.

MR TAYLOR : Any objection to that affidavit ?

COLONEL ORLOV : No objection.

MR. TAYLOR : Let the affidavit be marked Gestapo No. 51 for identification.

DR. MERKEL : Gestapo No. 52 is an affidavit by criminal secretary Erich Thun. Summary : The Gestapo office of Danzig was not athorized to enter concentration camp Stutthof whenever any people were sent to it. The concentration camps were not under the jurisdiction of the Gestapo. The Gestapo had no influence whatsoever upon food, treatment, and medical treatment of the prisoners. When a person was handed over to the concentration camp, the protective custody was entered for the Gestapo. The political department of the concentration camp was under the jurisdiction of the camp commandant.

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MR TAYLOR : Any objection to the affidavit ?

COLONEL ORLOV : No objection.

MR TAYLOR : Let the affidavit be marked Gestapo No. 52 for identification.

DR. MERKEL : The next affidavit No. 53 was given by Marianne Wolgast, a woman and a student of law. The people working in the I.G. Farbeninstallation near Auschwitz, and the population of Auschwitz did not anything concerning the true character of the concentration camp at Auschwitz.

MR TAYLOR : This is an affidavit for the purposes of showing this one person did not know anything about it, but where did she get her information?

DR. MERKEL : This Marianne Wolgast was employed by the I.G. Farben works as a student. Her testimony does not only refer to herself, but also to the people working with . She says in her testimony that during the entire time she was in Auschwitz she had not heard from any one anything to the effect that the concentration camp at Auschwitz was a Jewish extermination camp, and ends by saying that she did not believe that the population of Auschwitz had any knowledge of these incidents.

MR. TAYLOR : IT appears more or less as a personal opinion. It will be received and marked Gestapo No. 53 for identification, although I am a little doubtful that the affidavit is a defense.

Dr. MERKEL : May I add one sentence?

Mr. TAYLO : Yes,

MR. MERKEL : It is true that this witness put down her personal impressions, but these personal impressions are based on a number of conversations she had with anumber of the people whom she met there.

MR. TAYLOR : Do you have any comment to make Colonel Orlov on the affidavit?

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COLONEL ORLOV : After the testimony given by Hoess, we know of the conditions as they really existed in Auschwitz. I have no objections towards this document. This woman merely says that she lived in Auschwitz near the concentration camp, and talked to a number of people. I doubt there is any probative value to the affidavit, but have no objection against it.

MR TAYLOR : Very well. The next affidavit.

DR MERKEL : The next affidavit No. 54, by Fritz Liphardt, Oberregierungsrat, senior counsellor. Summary : The administration charged the guarding and inspection of the concentration camp did not belong to the jurisdiction of the Gestapo; that the members of the Gestapo did not have any possibility of getting to or insight into the inner conditions of the concentration camp; never even of those in it which the Gestapo has not itself protective custody of arrested persons. During the inspections of concentration camps Sachsenhausen, Dachau and Auschwitz in 1937, 1938, and at 1941 and 1942, by a total of 280 leading Gestapo officials, no irregularities of any kind whatsoever could be discovered. If the leading officials of the Gestapo did not know anything of the conditions in the camps, how much less could the great mass of Gestapo members who had never even seen a concentration camp know of them.

MR TAYLOR : Any objection to the affidavit ?

COLONEL ORLOV : I don't quite understand on what the testimony of Fritz Liphardt is based. Either he himself heard something, or he bases his testimony on reports, affidavits, or documents that he has read.

MR MERKEL : The affidavit shows that Fritz Liphardt himself took part in the inspections of three concentration camps mentioned, that is, Sachsenhausen, Dachau and Auschwitz. During these inspections he saw nothing of any irregularities or mistreatments, or bad living conditions. He says

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in Auschwitz we were pointed out the crematorium that was there in order to cremate inmates who had died in Auschwitz, but the crematorium was not shown to us. As there were about twenty to thirty thousand inmates in Auschwitz, and the execution sentences of protective custody inmates carried out in Auschwitz, this was not very unusual.

COLONEL ORLOV: Under these circumstances I have no objection.

MT. TAYLOR: Let the affidavit be marked Gestapo No. 54 for identification

DR. MERKEL: The next affidavit No. 55 by Paul Willkomm, criminal officer. The resettlement of Jews from Polen lay in the hands of higher SS and Policefuehrer of concentration camps Maidanek, was not under the jurisdiction of the Gestapo.

MR. TAYLOR: Are there any objections to the affidavit ?

COLONEL ORLOV: No objection.

MR. TAYLOR: Let the affidavut be marked Gestapo No. 55 for identification.

DR. MERKEL: The next affidavit No. 56 by Reinheld Aust, criminal Kommissar. Summary : The tasks of intelligence belonged to the tasks of the Gestapo in 1934; all officials who had up to now been employed by the police intelligence were taken over by the Gestapo. The sphere of work of the police intelligence remained the same as before, also after had been taken over by the Gestapo. This division had nothing to do with the Handling of political offenses.

MR. TAYLOR: Any objection to the affidavit ?

COLONEL ORLOV: No objection.

MR TAYLOR: Well, let the affidavit be marked Gestapo No. 56 for identification.

DR. MERKEL: The next affidavit by Erich Hahnenbruch. Reg. Rat. Summary: There was no battle of the Gestapo against the charges as such, but only a defense of political attacks that was carried on on the part of the dominations against the Party. There was no connection between the division called the political church and the Jewry.

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At the end of 1944 about nineteen Protestants and 251 Catholic clergymen were in protective custody. At the beginning of 1945 a large number of them were dismissed. A series of Jehovah witnesses should have been condemned to death by the military courts as refusing to do military service, but by reason of an agreement between Himmler and the Ministry of Justice, they were entered into concentration camps. The document R 15 was not supposed to prohibit dominations but political activity of the confessional youth association. The same is shown by document 1521-PS.

MR. TAYLOR: Are there any objections to the affidavit ?

COLONEL ORLOV: No objection.

MR. TAYLOR: The affidavit may be marked Gestapo No. 57 for identification.

DR. MERKEL: The affidavit No. 58 is an affidavit by Felix Ruehl, Reg. Ags. The prosecution of churches as such was not intended by the Gestapo, but only the persecution of individual political clergymen. The Gestapo of Ausburg that had a total number of personnel of 150 officials and employees had only one official to work on church matters. From the first of September 1944 to March 1945 no clergyman was arrested by the Augsburg Gestapo.

MR. TAYLOR: Any objection to the affidavit.

COLONEL ORLOV: In my opinion the document is accummulative to No. 57.

MR. TAYLOR: Let the record show the objection of counsel for the prosecution to the affidavit.

DR. MERKEL: My sole reason for wishing to submit this affidavit is that it shows that of an entire number of 150 officials and employees of the Gestapo personnel, only one of them was there to work on church question

MR. TAYLOR: The affidavit will be marked as Gestapo No. 58 for identification.

DR. MERKEL: The next affidavit is No. 59 by Hans-Helmut Wolff, Oberregierungsrat. Summary : From March 1938 until January 1940 no clergyman was entered into a concentration camp by the Gestapo office Halle and Frankfurt. The Gestapo did not carry on a regular church information

service and supervision of sermons only took place at a rally.

MR. TAYLOR: Any objection ?

COLONEL ORLOV: No objection.

MR. TAYLOR: The affidavit will be marked as Gestapo No. 59 for identification.

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DR. MERKEL: The next affidavit is No. 60 by Josef Strohmeier, and states :

The inmates of female labor training camps near Munich were not mistreated by guards. The inmates were adequately dressed and fed and were also under medical care.

MR. TAYLOR: Is there any objection to the affidavit ? If not, the affidavit will be marked Gestapo No. 60 for identification.

DR MERKEL: Affidavit No. 61 by Alfred Woltersdorf, in which he states :

From 1920 until 1945 witness never mistreated any prisoner nor suffered any mistreatment. Physical injuries or infliction of physical injuries during duty were seriously punished.

MR. TAYLOR: Are there any objections to this affidavit ? If not, let the affidavit be marked No. 61 for identification.

DR. MERKEL: Affidavit No. 62 is an affidavit by Ernst Fuche:

Summary : After the entry of the Allied troops it was alleged by the Frankfurt Press that a torture chamber of the Gestapo had been on the premises on Linden Strasse,No 27, in Frankfurt. The witness conducted an American commission there and confirmed at the premises that no such torture chamber had even been there.

MR. TAYLOR: Is there any objection to the affidavit ?

COLONEL ORLOV: I don't understand this affidavit. What value is this affidavit ?

DR. MERKEL: This affidavit is supposed to show that first, as in the case mentioned here, the existence of Getapo torture chambers is spoken of and the existence of other torture chambers was alleged also but in reality did not exist. The French Prosecution for example have submitted documents with the intent to prove that such torture chambers existed with security Police officers in France, and just as the Prosecution has tried by submitting certain documents to show that torture chambers, at least as applied to Frankfurt did not exist.

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COLONEL ORLOV: Counsel does not convince the Prosecution, The witness was a radio employee and had nothing to do with the Gestapo. What is the meaning of the affidavit and what does it prove - that Fuche proved that a report concerning the existence of torture chambers was unfounded ?

DR. MERKEL: I would like to be allowed to reply in a few words. This Mr. Fuche was drafted into the Gestapo under the emergency service regulations from the 1st of October 1943, until March 19th 1945 and he further testified to the fact, namely, that a torture chamber which was supposed to have been on the premises of Linden Strasse, No, 27, in Frankfurt, in reality did not exist there.

COLONEL ORLOV: Fuche himself doesn't say this. He just said that an interpreter by the name of Budeschek, who was a former member of the Gestapo was employed by the American Military Government to conduct a commission down there and that the Commisson did not find anything on these premises. I might agree with the Prosecutor but at any rate Fuche tells us that this interpreter conducted the Commission there but that nothing was found there, as the torture chamber actually did not exist. In my opinion no objection can be made to a witness testifying to what a third person has told him. Similar documents are also being used by the Prosecution.

MR. TAYLOR: Was affiant a member of the Commission or party to the inspection ?

DR. MERKEL: No, evidently not. He just heard this from Budeschek.

MR. TAYLOR: The affidavit appears to be more or less hearsay, but for the value it may have for the defense it will be received and marked Gestap No. 62

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for identification, and the objection of the Prosecution will be noted in the record.

DR. MERKLE : The next affidavit No. 63 was made by Adolf Jawinsky in 1943.

Summary : No prisoners in the police prison at Schveningen and Groeningen were maltreated. Severe punishments were threatened for that treatment. During the retreat of German troops prisoners at Schveningen and Groeningen were not killed but either dismissed or removed.

MR. TAYLOR : Are there any objections to the affidavit?

COUNSEL ORLOV : No objections.

MR. TAYLOR : Let the affidavit be marked No. 63 for identification.

DR. MERKLE : The next affidavit, No. 64, by Jakob Kramer, states :

At the end of March, 1945, fifteen members of the resistance movement were arrested in Innsbruck. In spite of the fact their offenses had been proved, the fifteen persons were not killed at the approach of Allied Troops but set at liberty.

MR. TAYLOR : Is there any objection to the affidavit? If not, the affidavit will be marked No. 64 for identtification.

DR. MERKLE : The next affidavit is an affidavit by Albert Haden, No. 65 :

Summary : Re-examination by the Gestapo liaison officers in Salzgitter in the year 1943 at camp No. 49 for foreign laborers (Reichswerk Salzgitter) showed that several fuehrers of the camp had confiscated certain food meant for the workers and used it for themselves. As the laborers from the East were not allowed to appear as witnesses before an ordinary

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court, the incident was reported to the RSHA. The guards concerned were entered into a concentration camp, though one of them was a political leader of the NSDAP.

COLONEL ORLOV : I don't quite understand this affidavit. In the previous affidavits that have been submitted they have read and it was maintained that the Gestapo had nothing to do with concentration camps, and in this affidavit mention is made of the fact that several camp fuehrers had committed an offense and were arrested.

DR. MERKLE : May I say the following in a few words concerning what the Gestapo had to do with concentration camps? I have maintained and tried to prove that the Gestapo had nothing to do with the treatment of the inmates and inner administration and conditions as they existed within the concentration camps, but that these concentration camps were under the jurisdiction of the SS economic administration main office, but I have never tried to deny nor have I denied that the entering of protective custody prisoners into concentration camps was made by Gestapo office, as well as other offices. In this affidavit we only treat of the fact that certain guards who had committed offenses towards certain inmates in their turn entered into concentration camps by the RSHA. That was, of course, one of the duties of the Gestapo.

MR TAYLOR : Are there any further objections?

COLONEL ORLOV : In affidavit No. 54 it says for example that the regiments, administration, inspection and guarding of concentration camps did not belong to the jurisdiction of the Gestapo. Members of the Gestapo had no possibility of getting any insight into the inner relations of the concentration camps, or even into those in which they entered their protective custody prisoners. With the transfer into the concentration camp the

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protective custody case was finished by the Gestapo.

Dr. MERKLE : It is perfectly clear and I completely agree with Colonel Orlov, but that exactly is where the difference comes in, the transfer into the concentration camp was a case for the Gestapo. However, as soon as the prisoner was within the concentration camp he came exclusively under the administration of the concentration camp, and the administration of these concentration camps was exclusively an affair of the SS economic and administration central office. It was not an affair of the Gestapo and if affidavit No. 65 talsk about the r prisoners being transferred into the concentration camps that of course was an affair for the Gestapo, I mean the transfer into the concentration camps, and that is all this affidavit No. 65 is talking about, because it says that the guards were sent to a concentration camp though one of them was a political leader in the NSDAP. I don't see any contradiction to the previously submitted affidavits. I again want to outline that we must differentiate between the transfer into a concentration camp, the protective custody procedure and the execution of protective custody in the concentration camp.

MR. TAYLOR : Any further objections?

COLONEL ORLOV : No.

MR. TAYLOR : The objection of the prosecution and the reply of the defense will be noted in the record for the purpose of identification the affidavit will be marked Gestapo No. 65.

DR. MERKLE : The next is affidavit No. 65, an affirmation under oath by Hermann Wollmann.

Summary : A hospital was erected in Braunschweig for Russian and Polish workers in the year 1942. With the exception

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of the chief the entire personnel was composed of Russian laborers. The NSDAP became aware in 1944 that former Secretary Peters, who was chief of the hospital administration had taken food, alcohol and other things for a long period of time, and in answer to statements of the Russian Prosecution witnesses and so on a penal investigation was started and Peters was sentended to three years in jail. The NSDAP in Braunschweig on the basis of this very mild sentence considered whether it might not be advisable to put protective custody on Peters after he had served his sentence. In cases in which a department chief had committed immoral crimes against Russian or Polish females very strict measures were taken.

MR. TAYLOR : Is there any objection to the affidavit?

COLONEL ORLOV : No objections.

MR. TAYLOR : The affidavit will be marked Gestapo No. 66 for identification.

DR. MERKLE : Gestapo Affidavit No. 67 is an affirmation under oath by Walter of Walter Hildebrand.

Summary : The Gestapo had nothing to do with the deportation of foreign workers into the Reich territory and the labor offices and their employment staffs in the occupied territories were competent parties. Those details which regarded the care, shelter and food supplies of these workers had become derelict and were treated very severely by the state police.

MR. TAYLOR : Are there any objections to the affidavit? If not, the affidavit will be marked No. 67 for identification.

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DR. MERKLE : Affidavit No. 68 is an affirmation under oath by Willy Kluoting.

Summary : In Holland steps were taken against crimes against property by organized gangs which maintained they were Sipo officials and that they were entitled to confiscate property. Three of such gangs of twelve and sixteen men each were found in Amsterdam.

COLONEL ORLOV : No objection.

MR. TAYLOR : Let the affidavit be marked No. 68 for identification.

DR. MERKLE : Affidavit No. 69 is an affidavit by Kurt Wenzel, and concerns the appropriation of strange capital by Gestapo officials and states it was stricly penalized by a procedure against the Secretary of the Criminal police attached to the Gestapo office in Holland who had enriched himself with Jewish property and another procedure against concentration camp commanders who had enriched themselves on property belonging to prisoners.

MR. TAYLOR : Are there any objections to the affidavit?

COLONEL ORLOV : No.

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MR. TAYLOR: Let the affidavit be marked Gestapo No. 69 for identification.

MR. MERKLE: The next one is affidavit No. 70 by Rudolf Seidel.

MR. TAYLOR: Do you have the original affidavit, Dr. Merkle

DR. MERKLE: This is a carbon copy. I have only this copy, which, however, was signed by himself and certified. Unfortunately, I haven't the original.

MR. TAYLOR: It is submitted as the original though?

DR. MERKLE: If you will please consider it as such.

Summary: Officials of the Gestapo who became members of the SS on the basis of a corresponding ranking coordination in the SS did not become members of the General SS. Still less were the so-called uniform wearers of the Sipo and SD members of the SS.

MR. TAYLOR: Are there any objections to the affidavit? If not, let the affidavit be marked Gestapo No. 70 for identification.

DR. MERKLE: The next affidavit No. 71 is an affirmation under oath by Dr. Horst Laube.

Summary: Keitel's statement that with the employment of the higher SS police leaders in France, the persecution of Jews and arbitrary application of the nicht tag edict, that his statement is incorrect. Matters against the Jews had been executed by the French government in agreement with the military commanders and with the German Embassy since 1940, even before the employment of the higher SS and police leaders, the nicht tag decree had been applied by the commando staffs of the militar commanders.

Furthermore, it is not correct that there had been an independent political executive even before 1942. Rather the political executive up until April 1942, came under the supervision of the military commander of Paris and was in the hands of the French police of the GSP and the field gendarmie. Police

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in the German armed forces did not work against each other but they cooperated. The German police also did not work in an arbitrary manner, particularly as far as hostages were concerned. The three shootings of hostages from May 1942, until February 1944 were based on the directives issued to the militar commanders and to the higher SS and police leaders.

MR. TAYLOR: Is there any objection to the affidavit?

COLONEL ORLOV: No.

MR. TAYLOR: Let the affidavit be marked Gestapo No. 71 for identification.

DR. MERKLE: No. 72 is an affidavit from Heinrich Truckenbrodt.

Summary; The composition of the personnel of the Gestapo in Hannover from 1937 until 1944: Twenty per cent detectives who were taken on before 1933 by the political police; seventy per cent were schutzpolisei officials who partly for the duration of the war had been attached to the Gestapo, and ten per cent came from the free professions, including those who were drafted on the basis of the emergency decrees. The Stapostelle in Hannover took steps against excesses against the Jews on the 9th and 10th of November 1938. SS and SA men who had enriched themselves were punished.

MR. TAYLOR: Is there any objection to the affidavit?

COLONEL ORLOV: No.

MR. TAYLOR: Let the affidavit be marked Gestapo No. 72 for identification.

DR. MERKLE: The next affidavit is from Kurt Joergens and is No. 73.

Summary: The technical officials of the Gestapo had nothing to do with either the active execution of any executed tasks, much less had they become aware of them in any way.

MR. TAYLOR: Are there any objections to the affidavit?

COLONEL ORLOV: No objections, thank you.

MR. TAYLOR: Let the affidavit be marked Gestapo No. 72

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for identification.

DR. MERKLE: The next one, No. 74, is a statistical summar of 530 members of the Gestapo in the camp Darmstadt. It has been sworn to by Reinhard Wollf. Only 60.5 per cent were volunteers, four of the 530 men had been previously sentenced before 1933; 21 individuals were members of the SS and 87 were members of the party. 31 members were members of the NSDAP of Germany and 3 were members of the communist party of Germany; 170 of them were protestants, 52 were catholic and 257 of them were professional policemen.

MR. TAYLOR: If there are no objections the affidavit will be marked Gestapo No. 74 for identification.

DR. MERKLE: The next affidavit is No. 75 and it comes from Karl Foerster.

Summary: Only the RSHA could pronounce protective custody. The competent office was occupied only by administrative officia Decrees and regulations had been issued pertaining to protectiv custody proceedings. In many cases only a warning or bail was given instead of a protective custody asked for by the Gestapo. Each order for protective custody was constantly re-checked. Either dismissal or eased employment was ordered in good conduc cases. The

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office handling protect ve custody did not issue the orders pertaining to the mass arrest of Jews.

The concentration camps were not subordinate to the Gestapo but to the inspector of the concentration camps or the SS economic or administrative central office. Teh political departments of the concentration camps also did not come under the Amt IV but under the camp commanders.

He knew of the "bullet" decree, but at an official conference with the Chief of Amt IV the word "bullet" was interprete' in the talks that it was not to mean "shooting" by any chance but merely referred to the fact arrestees were to be kept from escaping by an iron ball to be attached to their foot. Neither the office of protective custody nor the mass employees of Amt IV. or of RSHA were acquainted the extermination of Jews or other crimes.

MR. TAYLOR : If there is no objection let the affidavit be marked Gestapo No. 75 for identification.

DR. MERKLE : No. 76 is an affidavit by Guenter Fentz.

Summry : Basically membership in the Gestapo was not voluntary. Basically resignation was not possible. The Gestapo office in Darmstadt in 1940 to 1942 was composed of approximately fifty-seven per-cent officials, and forty-three per-cent employ es. Of the latter figure eighty-four per-cent were not employed in state police tasks. The office of the SIPO and of the SD in occupied territories also were not composed of voluntary members. While the witness was active in Darmstadt from 1940 until 1942 and in the RSHA from 1942 to the end, he had not become aware of any third degree interrogation cases. Severe punishment was meted out in case of mal-treatment of prisoners. Thus, a

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a warden in a jail was punished with a rather long prison sentence for a mistreatment of a Jewishprisoner in the year 1940, and he was put out of his office. The Gestapo officials were not outside of the law and Justice. The members of the Gestapo by the creation of the SS and police judiciary were submitted to more severe principles of law than other felons. Thus, fifty Gestapo members had committed crimes during the evacuation of Jews in the year 1942. Partly they were sentenced to death or to long prison sentences. The crimes with which the Gestapo is charged today were not known.

MR TAYLOR : If there is no objection the affidavit will be marked No. 73 for identification.

DR. MERKLE : Affidavit No. 77 is by Felix Fuchl.

Summary : it was generally known that the purpose of the deportation of the Jews was their employment and not by any means their biological extermination. Visits is these concentration camps did not show any irregularity. Despite several visits in prisoner of war camps nothing had become known of the fact that Jews had been there or were to be executed.

As far as parachute troops were concerned, the only thing that was known was that they were to be picked up and immediately to be transferred to the custody of the armed forces, but not that they were to be shot, and also the fact that no one know anything about the activities of any other internment office was to be found in the strict secrecy of all agents within the Gestapo

MR. TAYLOR : If there is no objection, the affidavit will be marked No. 77 for identification.

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DR. MERKLE : No. 78 is an affidavit from Anton Weiss.

Summary : Nothing was known about the extermination of Jews but the special action group of Gestapo officials did not have any chance to see what was going on in the concentration camps and particularly they could not know anything about the maltreatment and killing there.

MR. TAYLOR : If there is no objection, let the affidavit be marked No. 78 for identification.

DR. MERKLE : Affidavit No. 79 is by Hans Tesmer.

Summary : Neither the witness nor other members of his office know anything about extermination of Jews, mistreatments and killings in the concentration camps and such like.

MR. TAYLOR : Are there any objections to the affidavit?

COLONEL ORLOV : No.

MR. TAYLOR : Let the affidavit be marked Gestapo No. 79 for identification.

DR. MERKLE : Next is affidavit No. 80 by Erich Mahnenbruch. The great mass did not know anything about the crimes with which the Prosecution has charged the Gestapo, particularly because of the secrecy regulations. Despite visits to Sachsenhausen and Dachau, the office for dealing with matters pertaining to the Church in the RSHA had not become aware of the mistreatment in the concentration camps. Any misdemeanors of any sort were to be particularly penalized if they were committed by members of the Gestapo, by the SS and Police corps.

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Thus, I heard that a commandant of a concentration camp was hanged by order of Himmler on the presence of all other concentration camp commanders because he permitted mistreatment a and because he had stolen property belonging to the inmates.

MR. TAYLOR : Is there any objection?

COLONEL ORLOV : One moment, sir, the affidavit of Hans Tesmer reads as follows :

"A refferent told me that a commandant of a concentration camp by order of Hi mler has been hanged in the presence of other concentration camp co mandants because he had permitted maltreatment and because he had stolen property of inmates." That is so intolerable I doubt if this affidavit has any significance whatsoever. Perhaps the rest of it is based on such tales.

DR. MERKLE : It is perfectly correct as Colonel Orlov has stated that this is not a description based on his own experience but merely the re-telling of a story told by a third person. of course, it is up to the Tribunal to evaluate the correctness of such as to whether it is true or not. In my opinion, the witness has re-told correctly the story told to him. Of course, I cannot examine the witness as to whether it is true or not but on the other hand I do not believe that a referrent tells such a story unless it is true.

MR. TAYLOR : Colonel Orlov, have you any further objection?

COLONEL ORLOV : Yes, I have another objection. it is my opinion that the whole affidavit is based really on assumption and heresay.

DR. MERKLE : Even if this one point should be not objectively true, I beg that this affidavit be accepted pertaining to other matters contained therein, such as the knowledge

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of the office dealing with matters pertaining to churches and regarding the situation in concentration camps.

MR. TAYLOR : The objection of the Prosecution and the reply of the defense council will be noted in the record and the affidavit will be marked Gestapo No. 80 for identification.

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DR. MERKEL: The next one is 81, an affidavit by Anton Kramer. The crew of an emergency landed English bomber in North Germany was protected against the threats of the population by the witness in his capacity as an official of the STAPO toward the end of 1944.

COMMISSIONER: Any objections? Then let the affidavit be marked Gestapo No. 81 for identification.

DR. MERKEL: No. 82 , by Hans Tesmer. The shooting of the 12,000 Polish officers in Katyn was not executed by Einsatzkommando of the SIPO and of the SD, because - according to the expert opinion of the Commission, these executions took place in the beginning of 1940. That is to say, at a time when there were neither German troops nor German police in the country.

COMMISSIONER: Any objections to the affidavit?

COLONEL ORLOV: I have an objection to this affidavit. The case of Katyn was examined by the International Military Tribunal very thoroughly in a special session. Very many witnesses were heard before the Tribunal itself. The witness Tesmer has written as follows:

Discussions with members of the army group, among others with the then chief administrative officer Col. I.G. von Unold, as well as with the chief of the propaganda echelon, I became convinced that these Polish officers were shot during the period from January to October 1940.

The military had submitted to it, special documents and writings which stated when these killings had taken place. That is why I believe this affidavit does not prove anything in the face of stories told to the witness, because these statements were made by those who themselves were interested in it; consequently, it might be self-serving evidence. This objection, as far as I am concerned, is of very great importance, and I suggest rejection of this affidavit absolutely.

DR. MERKEL: As to the first objection of the prosecutor:

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The attorneys for the defense did not have an opportunity to hear the witnesses which have appeared before the Tribunal because a ruling of the Tribunal prohibited it expressly. I only submit this affidavit because within the evidence submitted by the Russian prosecution it was charged that these 12,000 Polish officers were executed by an Einsatzkommando of the SIPO or th e SD. I do not find, either, that this affidavit brings anything new as such; as far as I know, all this affidavit does is repeat the point of view of the German defense. I submit this affidavit only in an attempt to prove that members of the SIPO could not have taken part in this execution in Smolensk because neither German troops nor German police were present in Smolensk during that period.

COLONEL ORLOV: Furthermore, I don't know what the connection is between the Gestapo and this case. I myself do not know all the documents pertaining to this case; all I know is that everything has been examined thoroughly by the Tribunal. That is why, in my opinion, this document has no relevancy at all to the Gestapo. First, one must be acquainted with all these documents which I have just mentioned. Only then could we know whether this affidavit has any relevancy to the case of the Gestapo.

DR. MERKEL: It was the Russian prosecutor who brought about the connection with the Gestapo during the proceedings by submitting a document to a witness and asking him whether at that period Einsatzgruppe of the SIPO or the SD had been active in Smolensk. That is the only connection between the SIPO and the case of Katyn.

COLONEL ORLOV: If the Commission has not become convinced that this affidavit should be rejected I beg the Commission to grant me time to have the entire document translated, and read all the affidavits pertaining to the case of Katyn.

COMMISSIONER: The objections to Affidavit No. 82 by the prosecution, and comment thereon by defense counsel, is noted in the record. The request of the prosecution that the affidavit

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be translated is accepted and the affidavit will be translated. The same will be marked Gestapo No. 82 for identification.

DR. MERKEL: No. 83 - an affidavit by Helmut Fromm. Organization of the office of the commander of the security police and of the security service in the general government. The members of this office did not come because of voluntary applications, but almost exclusively on the basis of being detached to it. The question of the Poles in the district of Lublin as mentioned in Document No. L-61 was executed on the basis of a directive of the higher SS and police leader. SIPO and SSD did not participate in this measure.

COLONEL ORLOV: No objections.

COMMISSIONER: Let the affidavit be marked Gestapo No. 83 for identification.

DR. MERKEL: Affidavit No. 84 - is another affidavit by Hans Tesmer. The resignation of the witness from the Gestapo was an exceptional case. The witness was reproached by Heydrich because of his being drafted to the Armed forces; and only as an exceptional case he did not take the most severe measures against it.

COMMISSIONER: Any objections?

COLONEL ORLOV: No objections.

COMMISSIONER: Let the affidavit be marked Gestapo No. 84 for identification.

DR. MERKEL: The last affidavit, No. 85, by Rudolf Diels. The lower and medium high administrative officials did not come to the Gestapo voluntarily, but they could not resign from the Gestapo either. They did not have any knowledge of executive work. They are to be judged like normal civil servants during that period. The lower and medium high executive civil servants also could not always recognize excesses against the law because they could not recognize the case in its entirety. If one assumes the organization to have been of criminal character, administrative and executive officials could have had any knowl-

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odge of it.... The group of technical civil servants, employees and those employed on the basis of emergency decrees cannot be regarded either as accomplices nor as having known of the "criminal character" of the organization. The affidavit dated 31 October 1945 can remain as such only within these limitations.

COMMISSIONER: Are there any objections to this affidavit?

COLONEL ORLOV: None.

COMMISSIONER: Let the affidavit be marked Gestapo No. 85 for identification.

DR. MERKEL: That is all.

COMMISSIONER: Dr. Merkel, outside of No. 82, do you have any request for any of these affidavits to be translated?

DR. MERKEL: Yes, I should like to request that the following numbered documents, or affidavits, be translated:

Nos. 46, 54, 74 and 76.

How many can we translate?

COMMISSIONER: We will try to submit the ones you want translated. If we can get them translated we want to do it. We will try to translate the important and material ones that you submit.

DR. MERKEL: That is all, sir.

COMMISSIONER: Very well, the Commission will adjourn until 10 o'Clock Monday morning.

The foregoing is a true and correct transcript of Affidavits submitted by Dr. Merkel, taken on 27 July 1946.

Charles Gallagher
Reporter

Rose W. Cook
Reporter

Genevieve Biolsi
Reporter

CERTIFIED TO:

Geo. R. Taylor
Commissioner